

MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 9:00 a.m. on March 10, 2011, in Room 783 in the Docking State Office Building.

All members were present except:

Representative Rocky Fund - Excused
Representative Michael Peterson - Excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Michael Wales, Kansas Legislative Research Department
Kay Scarlett, Committee Assistant

Conferees appearing before the Committee:

Karl Brooks, Regional Administrator, Region VII, U.S. Environmental Protection Agency
Josh Svaty, Senior Advisor, Region VII, U. S. Environmental Protection Agency
Randy Stookey, Staff Attorney, Kansas Department of Agriculture
Leslie Kaufman, President/CEO, Kansas Cooperative Council

Others attending:

See attached list.

Chairman Powell welcomed the Kansas Environmental Leadership Program class from K-State Research and Extension that were in attendance.

Copies of the January 2011 *American Stewards Digest* were distributed. *American Stewards Digest* is published by American Stewards of Liberty, a nonprofit organization that works to protect the property rights of America's landowners.

Karl Brooks, Regional Administrator, and Josh Svaty, Senior Advisor, Region VII, U. S. Environmental Protection Agency, addressed the committee and provided an overview the the Environmental Protection Agency. The EPA was formed in 1970 by the Nixon Administration in an effort to give support to the states and reduce the patchwork of environmental regulation throughout the country. Most of the actual work of regulation is conducted by the states. The EPA is organized into ten regional offices throughout the country; Kansas is in Region VII headquartered in Kansas City, Kansas. As an agency within the executive branch of the federal government, they are subject to the President and Congress, and cannot act without statutory authority.

The Environmental Protection Agency does not have a specific division designated for agriculture or one program focused on regulating agriculture. Agriculture will meet environmental regulation through one or a combination of several statutes. Several programs that interact with the agriculture community include Air and Waste Management, Environmental Services, Superfund, Water, Wetlands, and Pesticides. In Kansas the EPA works most closely with the Kansas Department of Health and Environment, but also with the Kansas Department of Agriculture. As with any federal agency, their primary purpose is to fulfill their statutory responsibility of maintaining the public health of all Americans and the environmental health of our natural resources. (Attachment 1)

Hearing on SB 186 – Pesticides; hearing prior to denial, suspension or revocation of license, registration or certification.

Chairman Powell opened the hearing on **SB 186**. Sean Ostrow, Office of the Revisor of Statutes, explained that this bill would repeal KSA 2-2451, which provides notice of a hearing prior to denial, suspension, or revocation of a pesticide business license, governmental registration, or applicator's certification. The bill would allow the Secretary of Agriculture discretion in suspending a pesticide business license without a hearing until compliance is reached if a pesticide business does not employ one or more commercial applicators who are certified in each type of commercial pesticide application which the pesticide business applies. Currently, the law states the Secretary must suspend the license if the pesticide business is not in compliance with the law.

CONTINUATION SHEET

The minutes of the House Agriculture & Natural Resources Committee at 9:00 a.m. on March 10, 2011, in Room 783 of the Docking State Office Building.

Randy Stookey, Staff Attorney, Kansas Department of Agriculture, testified in support of **SB 186** and explained that during the 2010 Legislative Session various statutes regarding pesticide business licenses were amended and signed into law. This bill would repeal KSA 2-2451 which is in conflict with the statutes that were amended in 2010. The Department concurs with the Senate amendment in KSA 2-2450, as proposed by the Kansas Cooperative Council and the Kansas Agribusiness Retailers Association, to change the mandatory suspension language "shall suspend" to the more permissive language "may suspend," if a pesticide business licensee fails to employ a commercial applicator certified in the appropriate category. (Attachment 2)

Leslie Kaufman, President/CEO, Kansas Cooperative Council, on behalf of of the KCC and the Kansas Agribusiness Retailers Association, appeared in support of **SB 186** that would repeal KSA 2-2451 as it duplicates other provisions within the act. They support the modification in KSA 2-2450 that would give the Kansas Department of Agriculture Secretary discretion to suspend, without a hearing, the pesticide business license for that category until the pesticide business employs a commercial applicator with the appropriate certification. (Attachment 3)

There being no other conferees, the Chairman closed the hearing on **SB 186**.

Discussion and action on SB 123 – Establishing fees for wildlife and parks cabins.

Chairman Powell opened discussion on **SB 123** and asked Raney Gilliland, Kansas Legislative Research Department, to review the bill. He explained that **SB 123** would change existing law to allow the Secretary of the Department of Wildlife and Parks, with the approval of the Kansas Wildlife and Parks Commission, to directly set fees for the use of cabins owned or operated by the Kansas Department of Wildlife and Parks, exempting the setting of cabin fees from the rules and regulations process. Maximum fees for use of KDWP cabins could not exceed \$250 per night; \$1,500 per week; and \$5,000 per month.

Representative Brookens moved to recommend SB 123 favorably for passage. The motion was seconded by Representative Grant.

Representative Kerschen moved to amend SB 123 on page 1, line 14, to set a maximum of \$1,000 per week. Seconded by Representative Prescott, the motion failed. Discussion ensued.

The motion by Representative Brookens, seconded by Representative Grant, to recommend SB 123 favorably for passage carried.

Discussion and action on HB 2357 – Arkansas River Gaging Fund.

Chairman Powell opened discussion on **HB 2357**. Raney Gilliland, Kansas Legislative Research Department, explained that this bill would establish the Arkansas River Gaging Fund that would be administered by the Secretary of the Kansas Department of Agriculture. All expenditures from the fund would be for the operation and maintenance of the gages along the Arkansas River necessary to manage water levels in the river under the Arkansas River Compact. In addition, royalties from the state's oil and gas leases in Hamilton, Kearny, Finney, Gray, and Ford Counties would be deposited in the Arkansas River Gaging Fund. He noted that a technical amendment would be needed on page 1, line 8, to strike "Kansas-Colorado."

Representative Brookens moved to recommend HB 2357 favorably for passage. The motion was seconded by Representative Hayzlett.

Representative O'Hara moved to amend HB 2357 on page 1, line 14, to put a cap of \$75,000, annually, on royalty moneys from the state's oil and gas leases in the five counties to be credited to the Arkansas River Gaging Fund. Also, to amend HB 2357 on page 1, line 8, to strike "Kansas-Colorado" as proposed by staff. Seconded by Representative Arpke, the motion carried.

Representative Moxley moved to amend HB 2357 to state that after all expenditures are made during the fiscal year for the operation and maintenance of the gages along the Arkansas River necessary to manage the river under the Arkansas River Compact, any remaining moneys to be expended from the fund for the

CONTINUATION SHEET

The minutes of the House Agriculture & Natural Resources Committee at 9:00 a.m. on March 10, 2011, in Room 783 of the Docking State Office Building.

fiscal year shall be expended for the purposes of livestock market reporting, not to exceed \$20,000 in a fiscal year; and second if there are any remaining moneys authorized to be expended from the fund for the fiscal year after the expenditure for livestock market reporting, then expenditures shall be made from the fund for the purpose of funding the blue stem pasture report in an amount not to exceed \$5,000 in a fiscal year. The motion was seconded by Representative Brookens.

Due to the complicated nature of the amendment, the Chairman requested that the revisor draft the new language before the committee votes on the proposed changes to **HB 2357**.

The meeting adjourned at 10:45 a.m. The next meeting of the House Agriculture & Natural Resources Committee is scheduled for March 11, 2011.

HOUSE AG & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: MARCH 10, 2011

NAME	REPRESENTING
Mike Beam	KS LUTHER ASSN.
Randy Stookay	KS Dept of Ag.
Gary Meyer	KS Dept of Ag.
Sarah Green	WDA
Jessie Kaufman	KS Co-op Council
Chris Cartmel	Sierra
Judy Willingham	KS, Env. Leadership Program
Scott Jones	" "
Chad Christie	" "
Angela Buzard	" "
Tonya Richards	" "
Brandi Nelson	" "
Keith Martin	" "
Bobbi Wendt	" "
Natalie Snyder	" "
CARA HENDRICKS	KELP
Travis Sieve	KELP
Glynn Lyle	KELP
Matt Harrah	KELP
Brad Lovelass	Westar
BILL EASTMAN	WESTAR
Tim Stroda	KS Pork Association

HOUSE AG & NATURAL RESOURCES COMMITTEE
GUEST LIST

DATE: MARCH 10, 2011

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Testimony before the House Committee on Agriculture and Natural Resources
March 10, 2011

Good morning Mr. Chairman, members of the committee. I am Joshua Svaty, and I serve as the Senior Adviser to the Regional Administrator for Region 7, Karl Brooks. Karl is able to be here with us this morning, and will speak to you about several of the issues you might be specifically interested in. I am here because as a former member of this committee, I thought it would be helpful to walk the committee through the Environmental Protection Agency – both where we interact with agriculture and where we do not.

I don't have to explain the timeliness of this visit – you are all well aware of the conversation going on in agriculture about the EPA. Much of what you hear comes from other elected officials or agricultural groups. We are not here today in an effort to confront those talking points head on. Instead, it is my hope that I am able to bring to you a better understanding of the processes within the EPA, so when you hear criticism of the agency, you are better able to discern what is warranted and what is grandstanding.

The EPA is actually a rather young federal agency. We were formed in 1970 by the Nixon Administration in an effort to give support to the states and reduce the patchwork of environmental regulation throughout the country. That mission gives us the chance to truly develop great partnerships. Most of the actual work of regulation is conducted by the states. Here in Kansas, we work most closely with the Kansas Department of Health and Environment, but we also work with the Kansas Department of Agriculture.

We also have a lean structure. Rather than state offices, we have ten regional offices throughout the country. Kansas is a part of Region 7, and you may or may not be aware that the Region 7 office is actually located in Kansas City, Kansas. As you can see, Region 7 covers the heart of agriculture in the Midwest, which is the heart of agriculture for our nation. You might be interested to know that the Regions are allocated resources based on the population size within their area and the amount of work the EPA is conducting in that region. Region 7 actually has the least number of employees of any region and the smallest budget.

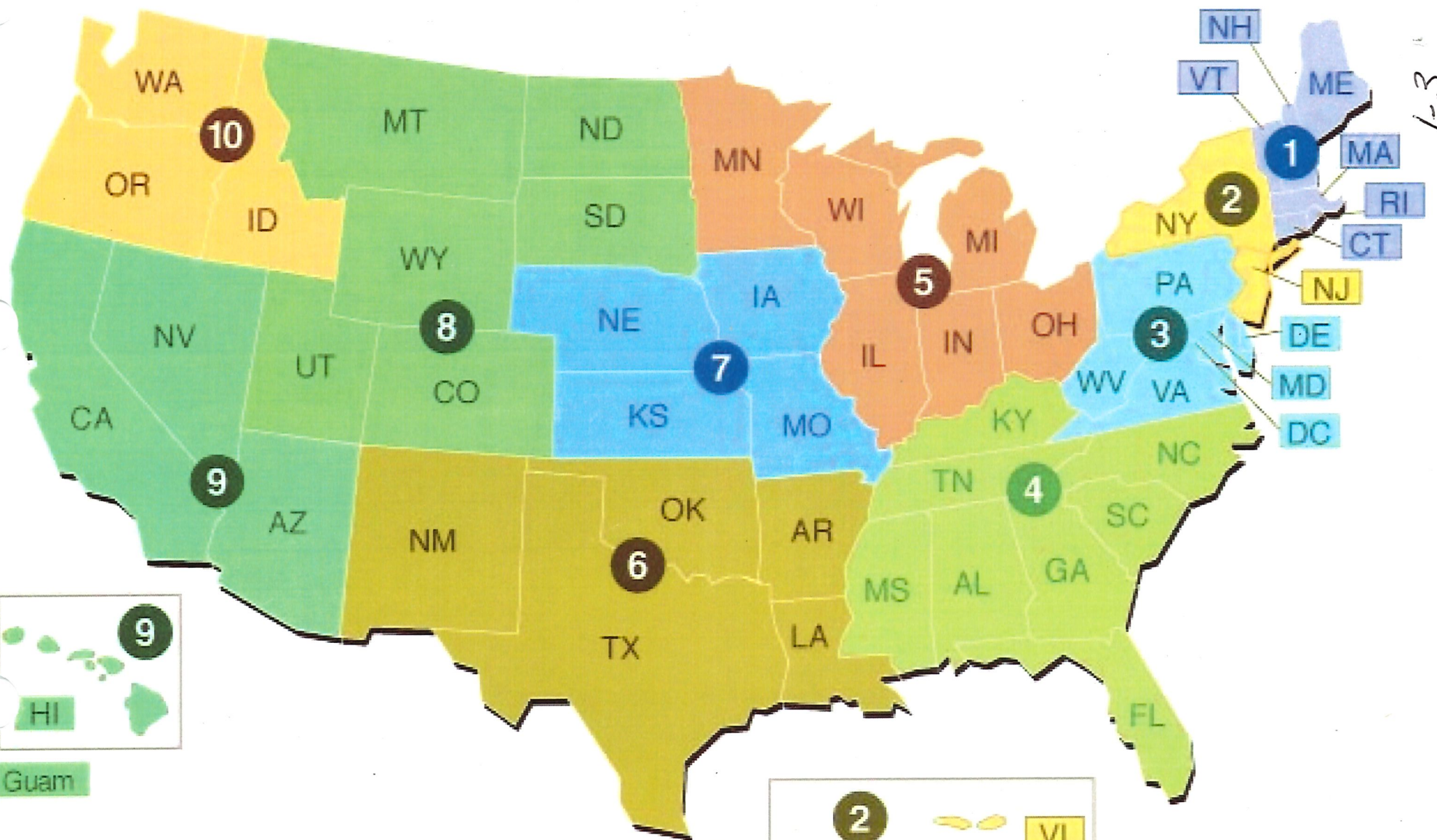
Even though we are younger and have a different structure from many federal agencies, we are fundamentally the same as any other agency within the executive branch of the federal government. We are subject to Congress and the President, and we cannot act without statutory authority. Our regulations all follow the similar path of promulgated regulations here in Kansas – before they become law, they must undergo a vigorous approval process that includes public hearings. Also, we conduct many periodic reviews. These periodic reviews are usually required by Congress. For example, we are currently undergoing a review of our Particulate Matter standards. This is a National Ambient Air Quality Standard review that is required by Congress every five years.

Within the Agency, we are organized in a fairly predictable fashion. We have our Headquarters in Washington, DC, and then we have the Regional offices that have the specific knowledge and handle day-to-day action within their respective parts of our nation. Here in Region 7, we have several programs worth noting to this committee – Air and Waste Management, Environmental Services, Superfund, and Water, Wetlands, and Pesticides. As you might imagine, Water, Wetlands and Pesticides has the most interaction with the agriculture community.

We do not have a specific division designated for “Agriculture”, either here in Region 7 or at Headquarters. There is no one program focused on regulating agriculture. Agriculture will meet environmental regulation through one or a combination of several of our statutes. Again, it is important to remember that although we have the purview of these statutes within our agency, most of this work is actually done by the states, and we are a partner with those states to make sure the regulation is carried out. Many of these are broad federal statutes – the Clean Water Act and the Clean Air Act are our most prominent examples. As a practical guide for agriculture, consider the National Pollution Discharge Elimination Service (NPDES). This is a permit program under the Clean Water Act, but it is carried out by the Kansas Department of Health and Environment. We also work extensively with the states on other statutes – the Resource Conservation and Recovery Act is a good example. This statute deals with monitoring hazardous waste “from cradle to grave.”

I think it is important to realize that the Environmental Protection Agency isn’t just the Clean Air and Clean Water Acts. We handle many things – often statutes that have little or no nexus with agriculture. Our superfund program handles issues like the Tri-State mining region, which includes the buyout of Treece, Kansas due to a century of lead mining there. We also handle the Community Right to Know Act, as well as the Safe Water Drinking Act, just to name a few.

Our legislative liaison, Sarah Hatch, is here today with us and she is a wonderful resource for you if you have questions in the future. As with any federal agency, our primary purpose is to fulfill our statutory responsibility of maintaining the public health of all Americans and the environmental health of our natural resources. However, we recognize that we have an important function in state partnership, and so we are pleased that you would invite us here today. At this point I am going to turn things over to our Regional Administrator to give some remarks and answer any questions.



Guam

American Samoa
Northern Mariana
Islands



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**Testimony on SB 186
to
the House Standing Committee on Agriculture and Natural Resources**

**by Randy E. Stookey, Staff Attorney
Kansas Department of Agriculture**

March 10, 2011

Good morning Chairman Powell and members of the committee. I am Randy Stookey, staff attorney with the Kansas Department of Agriculture (KDA). I am here in support of Senate Bill 186, which amends K.S.A. 2010 Supp. 2-2450 of the Kansas pesticide law, and repeals K.S.A. 2-2451 of the Kansas pesticide law.

Last year, SB 393 amended K.S.A. 2-2449 to allow the secretary authority to deny, suspend, modify or revoke a pesticide business license for cause, after "notice and the opportunity for a hearing," rather than after "notice and a hearing." This change was made to ensure consistency with other statutes the department administers. Additionally, K.S.A. 2-2450 was amended to require the immediate suspension of a pesticide business license in any category for which a pesticide business applies pesticides but fails to employ a commercial applicator who is certified in that category.

The amendments to K.S.A. 2-2449 and 2-2450 have caused K.S.A. 2-2451 to become redundant and unnecessary. Additionally, K.S.A. 2-2451 conflicts with portions of K.S.A. 2-2449 and 2-2450, as amended. K.S.A. 2-2451 requires the Secretary to hold a hearing before a pesticide business license is suspended, rather than allow the opportunity for a hearing, as provided by K.S.A. 2010 Supp. 2-2449. K.S.A. 2-2451 also conflicts with K.S.A. 2010 Supp. 2-2450 because K.S.A. 2-2451 does not include, as a reason for which a pesticide business license shall be automatically suspended, the failure to employ a commercial applicator certified in each category in which the licensee applies pesticides.

On February 15, 2011, KDA presented SB 186 to the Senate Agriculture Committee. At that hearing, the Kansas Cooperative Council, together with the Kansas Agribusiness Retailers Association, introduced a balloon amendment to SB 186 which sought the revocation of KSA 2-2451, and proposed an amendment to KSA 2-2450 changing the mandatory suspension language "shall suspend" to the more permissive language "may suspend," if a pesticide business licensee fails to employ a commercial applicator certified in the appropriate category. The KDA agreed with the balloon amendment, and the Senate Agriculture Committee approved SB 186 as amended.

In order to allow the Secretary broader discretion regarding the suspension of a pesticide business license for a licensee's failure to employ a requisite commercial pesticide applicator, and to remove the now-redundant statutes, KDA asks the committee to approve this bill.

I appreciate the committee taking the time to hear my testimony on SB 186, and will stand for questions at the appropriate time.



HOUSE COMMITTEE ON AGRICULTURE

March 10, 2011

RE: SB 186 – amending the pest control act.

Chairman Powell and members of the House Agriculture Committee, thank you for the opportunity to comment today in support of SB 186 as amended by the Senate Committee. I am Leslie Kaufman, President/CEO of the Kansas Cooperative Council (KCC) and I appear on behalf of the KCC and the Kansas Agribusiness Retailers Associations (KARA).

KARA's membership includes over 700 agribusiness firms that are primarily retail facilities which supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. The KCC is a voluntary, statewide trade association representing all forms of cooperative businesses across the state – agricultural, utility, credit, financial, refining and consumer cooperatives.

Collectively, our members include a majority of the commercial applicators in Kansas and they are impacted by changes to the Kansas Pest Control Act. As we understand SB 186, it was introduced to remedy an inconsistency between statutory provisions. As we worked through the original bill on the Senate side, we noted a need for further adjustment. The Kansas Dept. of Agriculture (KDA) was very willing to work with us and we requested an amendment which was adopted by the Senate Agriculture Committee. As such, we appear today in support of the bill as it stands.

Under the provisions of SB 186, KSA 2-2451 will be stricken as it really duplicates other provisions within the act. KSA 2-2450 (b) is being modified to give the KDA Secretary discretion to "suspend, without a hearing" the pesticide business license for a specific category if a commercial applicator with the appropriate certification is not currently employed by the business. The ability to act quickly and without hearing may be necessary if a situation arose where a non-certified individual was in the act of applying a specified chemical when the KDA made contact with such individual. But, suspension might not actually be warranted if there was a question over paper work on a renewal application. Another scenario where suspension might not be warranted could be when the business is in the process of hiring a certified commercial applicator during a season when no application of that type is currently being conducted, but they still technically do not have an "employee" for that category.

Although KSA 2-2450 (a) is reprinted in the bill, changes are not made to current law. Subsection (a) addresses financial security issues and in regard to those issues, the secretary's suspension authority is mandatory.

We support the SB 186 as amended by Senate Committee so that the Secretary's authority to suspend a pesticide business license under KSA 2-2452 (b) is permissive and not mandatory. This should give the KDA flexibility to react as situations are warranted by the circumstances, while allowing our members to avoid a suspension that might be technically mandated but really unwarranted.

We appreciate the discussions with the Dept. of Agriculture that lead to our compromise balloon on the Senate side. Their willingness to work with stakeholders has resulted in a measure that addresses needs in a mutually beneficial manner.

Thank you for your consideration. We hope that when the committee works this bill, you will act favorably on it. If you have questions about our testimony, I will certainly be glad to address them at the appropriate time.

Thank you.